

How to avoid sanctions for breach of terms of settlements in foreign currency

Many Ukrainian companies actively import goods and services. Frequently, their foreign counterparties require prepayment for delivered goods or rendered services. Therefore, it is worth remembering that prepayment in favour of the non-resident under foreign economic contracts triggers provisions of the Ukrainian legislation in relation to settlements in foreign currency, such as Article 2 of the Law of Ukraine "On procedure for settlements in foreign currency". This Article specifies that import transactions of residents, which are made on conditions of deferred delivery, if such deferral exceeds 180 calendar days from the day of prepayment or issuance of a promissory note in favour of the supplier of imported goods (works, services), require conclusion of the Ministry of Economic Development and Trade of Ukraine. Taking into consideration difficult situation in the country and the state's desire to control proceeds in foreign currency, the National Bank of Ukraine for over two years has been reducing the term for settlements in foreign currency to 90 calendar days.

Breach of currency regulations regarding terms for settlements in foreign currency will have negative consequences for a company. Firstly, there is a penalty for each day of delay in the amount of 0.3% of non-received proceeds in foreign currency (value of non-delivered goods) calculated in the Ukrainian national currency at the date of occurrence of indebtedness (the amount of penalty shall not exceed the sum of non-delivered goods). Secondly, the Ministry of Economic Development and Trade of Ukraine will sanction Ukrainian companies by imposing an individual licensing regime pursuant to Article 37 of the Law of Ukraine "On foreign economic activity".

The individual licensing regime for Ukrainian and foreign companies means that the Ministry of Economic Development and Trade of Ukraine will individually license each foreign economic transaction of such companies. Such consequences of breach of currency regulations lead to unfavourable position of Ukrainian importers and their foreign counterparties as they significantly complicate economic activity.

At the same time, it is worth mentioning that the imposition of a penalty for breach of currency regulations and individual licensing regime on the Ukrainian company directly depends on good faith and timely implementation of the contract by the foreign counterparty. Therefore, any delay in supply of goods or services, which often happens during manufacturing of goods, their delivery or customs procedures, may significantly complicate business activities of both Ukrainian importer and its foreign counterparty.

In certain cases, the parties understand as early as the execution stage of the agreement that due to the technological features of manufactured goods or difficulty of their delivery the 90-days period for settlements in foreign currency would not be complied with.

In order to avoid any penalties and application of the individual licensing regime by the Ministry of Economic Development and Trade of

Ukraine, a party may obtain a conclusion for extension of term for settlements under foreign economic transactions. Such mechanism is provided in the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for extension of term for settlements under foreign economic transactions".

Extension of terms for settlements in foreign currency is permitted in the following transactions:

industrial cooperation agreements (transactions on supply of raw materials, parts, spare parts, semi blanks, components and other industrial and related products, which are technologically interrelated and necessary for manufacturing of the final product), and also transactions for project and repair works and technical maintenance related to production and distribution of the final product;

consignment contracts;

complex construction agreements (transactions on project and search works, transfer of know-how in construction, manufacturing of construction materials, performance of construction works, Build-Operate-Transfer agreements, author supervision in construction, etc.), and also supply of machines, materials, equipment and building constructions for performance of such works (rendering services);

tender supply agreements;

guarantee maintenance agreements (export transactions on supply of goods, works, services, which provide for partial settlements upon signing respective certificates of technical acceptance, and also for final settlements following completion of the respective guarantee period);

supply of complex technical products (import of equipment parts or complex technical products, which require installation, construction, setting up, guarantee maintenance and commissioning, and also supply of complex technical products, manufacturing and transportation term of which exceeds 180 days);

supply of special purpose goods (international transfer of military goods and goods with double use, transportation (transit) of gas from foreign owner for its supply in the specified location (points), under terms of which the final settlement is made upon signing of relevant certificates).

Application for extension of term for settlement in foreign currency shall be submitted to the Ministry of Economic Development and Trade of Ukraine, which shall consider it within 10 days.

Therefore, the company may avoid being penalized or sanctioned for breaching the currency regulations through obtaining of a conclusion on extension of term for settlements in foreign currency.